Rosario R. Tina, Pro se
Jesus G. Tina, Pro se
865 Euclid Avenue
San Diego, CA 92114

FILED
08 JUN -5 PM 12:50
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ROSARIO R. TINA, and JESUS G. TINA, Plaintiffs, vs. DOWNEY SAVINGS AND LOAN ASSOCIATION, F.A. and DSL SERVICE COMPANY, Defendants,	CASE NO. '08 CV 1004 BTM POR **VERIFIED COMPLAINT AND EMERGENCY MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER**

VERIFIED COMPLAINT

AND EMERGENCY MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER

COME NOW the Plaintiffs, ROSARIO R. TINA, and JESUS G. TINA, pro-se, and sue Defendants DOWNEY SAVINGS AND LOAN ASSOCIATION, F.A. (hereinafter "Downey"), and DSL SERVICE COMPANY (hereinafter "DSL") and as grounds therefore would state as follows:

PRELIMINARY STATEMENT

1.

This Complaint is filed under the Truth in Lending Act, 15 U.S.C. section 1601 hereinafter called the "Act") to enforce the plaintiff's right to rescind a consumer credit transaction, to void the Defendant's security interest in the Plaintiff's property, and to recover statutory damages, reasonable fees and costs by reason of the Defendant's violations of the Act and Regulation Z, 12 C.F.R. section 226 (hereinafter called "Regulation Z").

JURISDICTION

2.

Jurisdiction is conferred on this Court by 15 U.S.C. section 1640 (e) and 28 U.S.C. sections 1331, 1337. The Court has authority to issue a declaratory judgment by virtue of 28 U.S.C. section 2201.

PARTIES

3.

The Plaintiffs, Rosario R. Tina and Jesus G. Tina are natural persons residing in San Diego County, California.

4.

Defendant is a Savings and Loan, F.A., engaged in the business of mortgage financing at doing business within this district.

5.

At all times material hereto, Defendant Downey, in the ordinary course of business, regularly extended, or offered to extend, consumer credit, for which a finance charge is or may be imposed or which, by written agreement, is payable in more than four installments.

FACTUAL ALLEGATIONS

6.

On or about March 21, 2006, Plaintiffs entered into a consumer credit transaction (hereinafter "the transaction") with Defendant in which the extended consumer credit was subject to a finance charge and which was initially payable to the Defendant.

7.

A true and correct copy of the settlement statement evidencing the transaction is attached hereto, marked as PLAINTIFF'S EXHIBIT A, and by reference is incorporated herein

8.

As part of this consumer credit transaction, the Defendant retained a security interest in 865 Euclid Avenue, San Diego, CA 92114 which is Plaintiff's property.

9.

The security interest was not created to finance the acquisition or initial construction of Plaintiff's property.

10.

A true and correct copy of the mortgage evidencing the Defendant's security interest is attached hereto, marked PLAINTIFF'S EXHIBIT B, and by reference is incorporated herein.

FIRST CAUSE OF ACTION

11.

This consumer credit transaction was subject to the Plaintiff's right of rescission as described by 15 U.S.C. section 1635 and Regulation Z, 12 C.F.R. section 226.23.

12.

In the course of the consumer credit transaction Defendant violated 15 U.S.C. Section 1635 (a) and Regulation Z section 226.23 (b) by failing to deliver to the Plaintiff two copies of a notice of the right to rescind that:

a. Clearly Identified the transaction.

b. Clearly and conspicuously disclosed the security interest in the Plaintiff's home.

c. Clearly and conspicuously disclosed the Plaintiff's right to rescind the transaction.

d. Clearly and conspicuously disclosed how to exercise the right to rescind the transaction, with a form for that purpose designating the address of Defendant's place of business.

e. Clearly and conspicuously disclosed the effects of the transaction.

f. Clearly and conspicuously disclosed the date the rescission period expired.

13.

The disclosure statement issued in conjunction with this consumer credit transaction, and attached as PLAINTIFF'S EXHIBIT C, violated the requirements of Truth in Lending and Regulation Z in the following and other respects:

a. By failing to include in the finance charge certain charges imposed by the Defendant payable by Plaintiff incident to the extension of credit as required by 15 U.S.C. section 1605 and Regulation Z, section 226.4,thus improperly disclosing the finance charge in violation of 15 USC section 1638 (a) (3) and Regulation Z section 226.18 (d). Such amounts include, but are not limited to

i. The broker fee.

ii. The credit report fee, which is not a bona fide and reasonable fee.

iii. The recording fees in excess of the actual recording fee which are therefore not a "bona fide and reasonable" fee.

iv. The settlement or Closing fee.

a. By improperly including certain charges, in the amount financed, which are finance charges, including but not limited to those itemized in Paragraph 12 (a) herein, the Defendant improperly disclosed the amount financed in violation of 15 U.S.C. section 1638 (a) (2) and Regulation Z, section 226.18 (b); and

b. By calculating the annual percentage rate (APR) based upon improperly calculated and disclosed finance charges and amount financed, 15 U.S.C. section 1606, Regulation Z, section 226.22, the

Defendant understated the disclosed annual percentage rate in violation of 15 U.S.C. section 1638 (a) (4) and Regulation Z, section 226.1

14.

The disclosures improperly made by Defendant as itemized in paragraph 13 are material disclosures as defined in the Truth in Lending Act, 15 U.S.C. section 1602 (u), Regulation Z 226.23 n. 48.

15.

The finance charge and APR were underdisclosed by more that the tolerance levels set forth in U.S.C. section 1635 (f).

16.

By reason of the material violations of 15 U.S.C. section 1638, Plaintiff has a right of rescission for three years from the date of consummation of the loan pursuant to 15 U.S.C. (f).

17.

Plaintiff rescinded the transaction by sending to Defendant at his business address by mail a notice of rescission.

18.

More than 20 calendar days have passed and Defendants have failed to take any action necessary or appropriate to reflect the termination of any security interest created under this transaction, including the security interest described as required by 15 U.S.C. section 1635 (b) and Regulation Z section 226.23 (d) (2).

19.

The Defendant has failed to return to the Plaintiff any money or property given by the Plaintiff to anyone, including the Defendant, as required by 15 U.S.C. 1635 (b) and Regulation Z 226.23(d) (2). Further, Defendant DSL as Trustee, breached its fiduciary duty to Plaintiffs.

20.

As a result of the aforesaid violations of the Act and Regulation Z, pursuant to 15 U.S.C. sections 1635 (a), 1640 (a), and 1641 (c), Defendant is liable to Plaintiff for:

a. Rescission of this transaction.

b. Termination of any security interest in Plaintiff's property created under the transaction

c. Return of any money or property given by the Plaintiff to anyone including the Defendant, in connection with this transaction.

d. Statutory damages for disclosure violations.

e. Statutory damages for failure to respond properly to Plaintiff's rescission notice.

f. Forefeiture of return of loan proceeds.

g. Actual damages in an account to be determined at trial.

h. Costs of this action.

PRAYER FOR RELIEF

WHEREFORE, it is respectfully prayed that this Court:

1. Assume jurisdiction of this case.
2. Declare the security interest in Plaintiff's home void.
3. Rescind the subject loan transaction.
4. Order Defendant to take all action necessary to terminate any security interest in Plaintiff's property created under the transaction and that the Court declare all such security interest void, including but not limited to the mortgage related to the subject transaction.
5. Order the return to the Plaintiff of any money or property given by the Plaintiff to anyone, including Defendant, in connection with the transaction.
6. Enjoin Defendant, during the pendency of this action, and permanently thereafter, from instituting, prosecuting, or maintaining foreclosure proceedings on the Plaintiff's property, from recording any deeds or mortgages regarding the property or from otherwise taking any steps to deprive Plaintiff of ownership of the property.
7. Award the Plaintiff statutory damages for the disclosure violation, in the amount of twice the finance charge in connection with this transaction, but not less than $200

or more than $2,000 as provided under 15 U.S.C. section 1640 (a).;

8. Award the Plaintiff statutory damages for Defendant's failure to respond properly to the Plaintiff's rescission notice, in the amount of twice the finance charge in connection with this transaction, but not less than $200 or more than $2,000 as provided under 15 U.S.C. 1640 (a).
9. Order that, because of Defendant's failure to respond to the Plaintiff's notice of rescission, the Plaintiff has no duty to tender, but in the alternative, if tender is required, determine the amount of the tender obligation in light of all of the Plaintiff's claims, and order the Defendant to accept tender on reasonable terms and over a reasonable period of time;
10. Award actual damages in an amount to be established at trial;
11. Award Plaintiff costs
12. Award such other and further relief as the Court deems just and proper.

VERIFICATION

Plaintiffs/Affiants declare that they have read the foregoing Verified Complaint and under penalty of perjury that the foregoing facts and allegations as contained therein are true and correct. Dated this 5th day of June, 2008.

Rosario R. Tina, Plaintiff
865 Euclid Avenue
San Diego, CA 92114
Phone 619-813-7844

JESUS G. TINA, Plaintiff
865 Euclid Avenue
San Diego, CA 92114
Phone 619-813-7844

CERTIFICATE OF SERVICE

We hereby certify that a true and correct copy of the foregoing Verified Complaint has been furnished to Defendant Downey Savings and Loan, F.A. at P.O. Box 6060, 3501 Jamboree Rd., Newport Beach, CA 92658 and to Defendant DSL Service Company at 8180 East Kaiser Blvd., Anaheim Hills, CA 92808 this 5th, day of June, 2008.

Rosario R. Tina, Plaintiff

JESUS G. TINA, Plaintiff

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

151603 - MB

June 05, 2008
12:51:30

Civ Fil Non-Pris
USAO #.: 08CV1004 CIVIL FILING
Judge..: BARRY T MOSKOWITZ
Amount.: $350.00 CA

Total-> $350.00

FROM: ROSARIO R TINA & JESUS G TINA,
PRO SE VS DOWNEY SAVINGS
AND LOAN ASSOC, ET AL

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED 08 JUN -5 PM 12:48 CLERK U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY: cp DEPUTY

I. (a) PLAINTIFFS

Rosario R. Tina, & Jesus G. Tina, Pro se

(b) County of Residence of First Listed Plaintiff SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Rosario R. Tina, & Jesus G. Tina, Pro se
865 Euclid Avenue, San Diego, CA 92114. 619-813-7844

DEFENDANTS

DOWNEY SAVINGS AND LOAN ASSOCIATION, F.A. and DSL SERVICE COMPANY

County of Residence of First Listed Defendant ORANGE COUNTY
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) '08 CV 1004 BTM POR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☒ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
15 USC 1601 et seq

Brief description of cause:
TILA Violations

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $** CHECK YES only if demanded in complaint: **JURY DEMAND:** ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE ______ DOCKET NUMBER ______

DATE 06/05/2008 SIGNATURE OF ATTORNEY OF RECORD x Rosario R Tina

FOR OFFICE USE ONLY

RECEIPT # 151603 AMOUNT $350 APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

AB 06/05/08

cn